

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT,
CONDITIONAL USE AND VARIANCE
PERMIT ISSUED BY THE CITY OF
TACOMA TO WILLIAM HANSON AND
O'NEILL BLACKER, AND DENIED BY
THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

WILLIAM HANSON and
O'NEILL BLACKER,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

SHB No. 80-14

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW

This matter, the appeal from a denial by the Department of Ecology of a Shoreline Substantial Development, Conditional Use and Variance Permit which had been granted to William Hanson and O'Neill Blacker by the City of Tacoma, came on for formal hearing before the Shorelines

1 Hearings Board on September 4, 1980, in Tacoma, Washington, and
2 convened again on September 19, 1980, in Lacey, Washington. Board
3 members present were Nat W. Washington (presiding), James S. Williams,
4 and Robert Derrick. Appellants represented themselves. Respondent
5 was represented by Robert V. Jensen, Assistant Attorney General.

6 Having heard or read the testimony, having examined the exhibits,
7 having viewed the site, having heard the argument of counsel, and
8 being fully advised, the Shorelines Hearings Board makes the following

9 FINDINGS OF FACT

10 I

11 A document denominated as a Shoreline Substantial Development,
12 Conditional Use and Variance Permit was issued to the appellants by
13 the City of Tacoma on March 18, 1980. The proposed development
14 consisted of the construction of a single family residence in the
15 Tacoma Community of Salmon Beach which fronts on the Tacoma narrows
16 between the Narrows Bridge and Point Defiance Park in a shoreline area
17 designated in the Tacoma Shoreline Master Program (TSMP) as S-3
18 Shoreline Segment: Western slope (North). The community has been
19 designated as a Historic District by the State of Washington. An
20 application for designation as a National Historic District was
21 denied. However, a single small house, one of the few retaining its
22 original architectural features, was placed on the National Register
23 of Historic Places. Salmon Beach consists of about eighty single
24 family residences each constructed over the water on posts or piling.
25 The community began about eighty years ago as a series of small,

1 single story recreational houses built over the water on posts or
2 piling. A steep bluff which rises directly from the beach affords no
3 landward building space. Over the years most of the small houses have
4 been substantially enlarged from time to time, and most are now
5 occupied as full-time, single-family residences. Many have been
6 raised to two stories, a few have been raised to three stories.

7 The community is not served by a city water or sewer system.
8 Water to the community comes from a series of privately operated
9 systems which tap springs or shallow wells on the steep hillside
10 above. There is no sewage system. Sewage is directly released from
11 each house. Whether it falls onto the beach or into the salt water
12 depends on the tide at the time of release.

13 II

14 The community is not served by a street. Vehicles are parked in
15 two parking lots at the top of the steep bluff. Two trails improved
16 with steps at the steeper portions of the bluff lead down to the beach
17 and provide the only landward access to the community. A single
18 pathway built in the narrow space between the base of the bluff and
19 the rear of the houses extends the full length of the beach and serves
20 as the only access route within the community itself. Heavy equipment
21 and building materials must be brought in by boat.

22 III

23 Even though Salmon Beach is within the city limits of Tacoma, its
24 difficult ingress and egress effectively isolate it from the City.
25 Because of its isolation, the residents do not really consider

1 themselves as a part of the City; and City officials over the years
2 have, for the same reason, largely ignored Salmon Beach. Neither the
3 City, the State nor Pierce County has ever made a serious effort to
4 enforce laws and regulations relating to zoning, building standards,
5 fire protection, and health. A system of benign neglect has prevailed
6 in the City Building Department. As a result, many houses have been
7 built and remodeled without building permits.

8 IV

9 Due to the City's well known "semi-official" policy of benign
10 neglect, the appellants, acting without a permit, dismantled their
11 dilapidated, one-story house located on Salmon Beach building space
12 No. 101. This house was so unsound it was not capable of being
13 remodeled. In its place, appellants began constructing a larger new
14 house which had the same horizontal dimensions as their old
15 single-story house but which was three stories in height. After most
16 of the exterior framing on the three-story house had been completed,
17 the City Building Department decided to enforce building regulations
18 and issued a stop work order. Appellants were told they needed a
19 building permit. Since the old house had been completely torn down
20 with only the piling-supported, building platform remaining, it was
21 determined by city officials that it constituted new construction
22 which would require the issuance of a shoreline substantial
23 development permit. Appellant then applied for a shoreline
24 substantial development, variance and conditional use permit.

25 A variance was considered to be needed to allow the residence to

1 exceed the 7-1/2 foot side yard set-back requirement imposed by
2 Chapter 13.06 of the Zoning Code of the City of Tacoma. A conditional
3 use permit was considered necessary to allow the construction of a
4 single family residence over water in the Salmon Beach area of the
5 Section 3 shoreline segment.

6 V

7 After conducting a public hearing the City hearing examiner
8 recommended that the permit be granted. His recommendation was
9 approved by the City Council on March 18, 1980. However, the
10 Department of Ecology denied the variance and conditional use aspects
11 of the permit. Appellants' request for review seeks a reversal of
12 this action of the Department of Ecology.

13 The major issues presented for determination are:

14 1. Maritime Character.

15 a. Whether the proposed three-story residence development would
16 preserve and enhance the maritime character of Salmon Beach in
17 accordance with the objective of the Historical, Cultural, Scientific,
18 and Educational element of the TSMP which is set forth on Page 47 as
19 follows:

20 To preserve and enhance the maritime character
21 of significant areas, sites and structure; including:

- 22 1. "Old Tacoma" and significant related
structures
- 23 2. City Waterway
- 24 3. Salmon Beach

25 We find that it would, provided that an approved on-site sewage
26 disposal system is required to be installed.

1 b. Whether the direct discharge of sewage from the appellants'
2 old house was a negative environmental factor which adversely affected
3 the maritime character of Salmon Beach.

4 We find that it was.

5 c. Whether allowing the completion of appellants' development,
6 including an approved on-site system for the disposal of human waste
7 and graywater would be a positive step forward in the ongoing effort
8 to eliminate the direct discharge of sewage at Salmon Beach and be a
9 favorable factor in enhancing the maritime character of the community.

10 We find that it would.

11 2. Sewage Disposal.

12 a. Whether allowing the appellants' development to proceed
13 without providing for an approved on-site sewage disposal system would
14 constitute a violation of RCW 90.58.020 and the requirement of the
15 Conservation Restoration and Natural Environment element of the TSMP
16 which is set forth on Page 44 as follows:

17 1. Support strict enforcement of air, water,
18 noise and pollution laws and regulations with the
19 ultimate purpose of eliminating these problems as
negative features of the environment.

20 We find that it would constitute a violation, unless appellants
21 are required to install an approved on-site sewage disposal system.

22 3. Variance.

23 a. Whether the variance granted by the City, which allows the
24 development notwithstanding the provisions of the Tacoma Zoning
25 Ordinance (Chapter 13.06) which provides for a 7 1/2 foot side-yard

1 setback, is consistent with Chapter 90.58 RCW, the TSMP and WAC
2 173-14-150(3)(a), (b), (c), (d) and (f).

3 We find that the variance ordinance 13.06 is not a part of TSMP
4 and, in any event, was not intended to cover Salmon Beach.

5 4. Conditional Use.

6 a. Whether the conditional use permit, granted by the City to
7 allow over-water residential construction, is consistent with the
8 provisions of Chapter 90.58 RCW, the TSMP and WAC 173-14-140(1)(a),
9 (b), (c), (d), and (e), and WAC 173-14-140(3).

10 We find that it is.

11 VI

12 The proposed three-story residence is certainly much taller than
13 the single-story dilapidated house it replaced and it may be the
14 tallest house on Salmon Beach; however, it is not over 35 feet in
15 height and is within the height limitation of the master program. Its
16 owner-designed architecture is much different from the house it
17 replaced and much different from most of the older houses on the
18 beach, but its size and architecture and style are not out of keeping
19 with the many houses that have been enlarged and rebuilt in recent
20 years.

21 At the time appellants old house was torn down to make way for the
22 new one it no longer possessed any historical or architectural value.
23 It had previously been enlarged and remodeled so many times that it
24 bore little resemblance to the old original cottage and retained no
25 worthwhile architectural attributes.

VII

The maritime character of the Salmon Beach depends very little on the age, size, architecture and state of repair of its houses, as is shown by the definition of the word "maritime."¹ It depends much more on the fact that all of its houses are built on piling over salt water. Another important element of its maritime character is that the community is not served directly by a road or by vehicular traffic, and that anything too heavy to carry must be brought in by boat. The proposed new house with its first story storage capacity for boats and nautical equipment and its improved and strengthened piling will tend to enhance the maritime character of the community in a practical and enduring way. Most of all, the development will enhance the maritime character of the community by pioneering the installation of an approved sewage disposal system and by eliminating a primitive system which discharged all of its sewage directly upon the beach or into the water. (An approved sewage disposal system will have to be installed or the development will not be able to proceed.)

We therefore find that the proposed development (including an approved sewage disposal system) will help to preserve and enhance the

1. Maritime is defined by Webster's New World Dictionary, College Edition as follows: (1) On, near, or living near the sea: as maritime provinces, a maritime people. (2) The sea in relation to navigation, shipping, etc., as maritime law.

The Thorndike-Barnhart Dictionary defines maritime as: (1) on or near the sea: a maritime city (2) living, near the sea; maritime people (3) of the sea, having to do with shipping or sailing, (4) Syn. nautical.

1 maritime character of Salmon Beach.

2 We also find that when the TSMP was adopted, it was recognized
3 that most of the houses on Salmon Beach had been enlarged and
4 remodeled, that architectural change had already altered greatly the
5 appearance of the community, and that its historical importance rested
6 much more on its sociological aspects than on its architecture.

7 VIII

8 The objective of the Salmon Beach Community, the City of Tacoma,
9 the Department of Social and Health Services, the Department of
10 Ecology, and the local health authorities should be to provide an
11 efficient legally authorized community-wide system of sewage
12 disposal. Appellants recognize the need for a community system, but
13 for use in the interim, they have proposed the installation of a
14 compost toilet for their proposed development. They have also
15 expressed a willingness to install a system for handling graywater,
16 which is water from household sources such as sinks, showers, and
17 washing machines.²

18
19 2. A promising system for handling graywater is under review by
20 the State of Washington. If approved, it could handle graywater
21 disposal not only for the proposed development, but for other
22 residences in Salmon Beach as well. It is a completely closed system
23 utilizing a 1500 gallon water tank. It removes impurities and allows
24 the purified water to remain in the system for reuse over and over
25 again. Since no graywater effluent is discharged, the system appears
26 to comply with WAC 248-96-050 which provides that effluent from any
on-site sewage disposal system shall not be discharged to surface
water or upon the surface of the ground. This system has been used
successfully in Colorado, but it will only be available for use in the
proposed development if it actually receives approval under the
provisions of WAC 248-96-046. This system when combined with the
already approved compost toilet, would produce a complete on-site
sewage disposal system which is fully closed.

IX

Individual on-site systems are not as desirable as a complete community-wide system. The installation of an on-site system should not be used by any Salmon Beach resident, including appellants, as a reason to refuse to hook up with a community system when it comes into being.

X

The entire southerly half of Salmon Beach, where the proposed development is located, is owned in fee by the Salmon Beach Improvement Club, Inc. This long narrow strip of land, described by metes and bounds in Ex. A-7, has not been subdivided into lots, so there are no side boundary lines to which the 7 1/2 foot side-yard setback provided for in Chapter 13.06 can apply. The setback, if applicable at all, could only be applied at the extreme northerly and southerly ends of the strip of land. The building site on which the appellants are constructing their house, commonly known as lot 101, is several hundred feet southerly of the northerly boundary line of the Salmon Beach Improvement Club, Inc., property. The signed, but unacknowledged boundary line agreement between appellants and their neighbors who live on lot 102 (Ex R-14) is only an informal agreement between the occupiers of land, as distinguished from the owners of

2. Cont.

There are a number of other potential methods for the on-site disposal of graywater, including a chlorination-sand filter system, which are under consideration for approval by the state.

1 land. Consequently, it did not establish a legal boundary line
2 between the two lots. The boundary of lot 101 as shown on Exhibit
3 A-12 is likewise only an informal boundary line.

4 We find that Chapter 13.06, the City of Tacoma Zoning Ordinance,
5 is not a part of Chapter 13.10, the Tacoma Shoreline Protection
6 Ordinance, or of the Tacoma Shoreline Master Program. Section
7 13.10.020 modifies the provisions of Chapter 13.06, but does not adopt
8 it as a part of the TSMP. Chapter 13.06 as modified by Chapter 13.10
9 may be applied by the city as a zoning ordinance in shoreland areas,
10 but may not be applied as being part of the TSMP. In addition, there
11 is no evidence that Chapter 13.06 has ever been approved by the
12 Department of Ecology. Not having been approved, Chapter 13.06 is not
13 a part of the TSMP. See RCW 90.58.090, RCW 90.58.100(1) and W. S.
14 Severns v. DOE, SHB No. 80-2.

15 XI

16 The pre-hearing order provides that the provisions of WAC
17 173-14-140(1)(a), (c), (d) and (e) and the provisions of WAC
18 173-14-140(3) be applied in determining the propriety of the
19 conditional use permit issued by the City, which allowed the
20 appellants to reconstruct their single family residence over water.

21 Since we have found that the proposed development would preserve
22 and enhance the maritime character of Salmon Beach, and that
23 preserving it as a historic area of the City does not mean maintaining
24 an architectural status quo, we find as a fact that the proposed
25 development is consistent with all of the pertinent provisions of WAC

1 173-14-140(1) and (3), provided that it is required that an approved
2 on-site sewage disposal system be installed.

3 An item by item analysis of WAC 173-14-140(1)(a), (c), (d), (e),
4 and (3) supports this finding.

5 (a.) Conditioning the permit to require an approved sewage
6 disposal system makes the permit consistent with the policies of RCW
7 90.58.020 and the policies of the Master Program.

8 (b.) (This issue was eliminated by the pre-hearing order.)

9 (c.) The Salmon Beach Community prides itself in the originality,
10 practicality and diversity of the design and configuration of its
11 owner-built houses. Some are large and some are small. Only one of
12 the many houses on the Beach looks like it was designed for suburbia,
13 and it is derisively referred to as an "intruder." The almost
14 completed owner designed and built house of the appellants though
15 ungainly, is practical, and certainly is not to be classed as an
16 "intruder." Although it is taller than most, it is not out of place
17 in the overall architectural diversity of Salmon Beach. In the formal
18 terminology of subsection (1)(c), the proposed use of the site and the
19 design of the project will be compatible with other permitted uses
20 within the area.

21 (d.) A permit condition requiring the installation of an approved
22 sewage disposal system will insure that the development will cause no
23 unreasonably adverse effects to the shoreline designation in which it
24 is to be located.

25 (e.) A permit condition requiring the installation of an approved

1 sewage disposal system will insure that the public interest suffers no
2 substantial detrimental effect.

3 (2) (This issue was eliminated by the pre-hearing order.)

4 (3) If other persons who wish to enlarge their houses at Salmon
5 Beach are required to meet the standards here imposed on the
6 appellants, the cumulative impact of the total of the conditional uses
7 will remain consistent with the policies of RCW 90.58.020 and will
8 produce no substantial adverse effects to the shoreline environment.

9 XII

10 Any Conclusion of Law which should be deemed a Finding of Fact is
11 hereby adopted as such.

12 From these Findings the Board comes to these

3 CONCLUSIONS OF LAW

14 I

15 The Historical, Cultural, Scientific, and Educational element of
16 the TSMP at Page 47 sets forth a specific objective relating to Salmon
17 Beach which is "to preserve the maritime character" of the community.
18 We conclude that the height, scale, architecture, bulk dimensions, and
19 placement on the building site of appellants' proposed development are
20 consistent with this objective.

21 II

22 The Shoreline Management Act (RCW 90.58.020) provides that the
23 policy shall be to promote and enhance the public interest and that
24 this "contemplates protecting against adverse effects to public
25 health." The policy set forth in the Conservation Restoration and

1 Material Environments element of the TSMP at Page 44 provides for the
2 "strict enforcement of....water...and pollution laws and regulations
3 with the ultimate purpose of eliminating these problems as negative
4 features of the environment."

5 It is our conclusion that the Shorelines Substantial Development,
6 Variance and Conditional Use Permit can only be made consistent with
7 the above provisions of RCW 90.58.020 and the TSMP if it contains
8 conditions specifically requiring the installation of a compost toilet
9 or similar device, approved by the Department of Social and Health
10 Services and the installation of a method or device for properly
11 disposing of graywater³ which has also been approved by the
12 Department of Social and Health Services. The installation of an
13 experimental or test method or device for the disposition of
14 graywater, if approved by the director of the Department of Social and
15 Health Services, would meet the requirement of the above policy of the
16 TSMP and would be consistent with RCW 90.58.020.

17 III

18 Since the most desirable permanent solution to the sewage problem
19 at Salmon Beach is a community-wide disposal system, a condition
20 should be placed in the Shoreline Substantial Development, Conditional
21 Use and Variance Permit, stating that permittees may not in any way
22 use the fact that they have installed an approved on-site disposal
23 system as a defense against being required to hook up to a community
24

25 3. See WAC 248-96-045, WAC 248-96-046, WAC 248-96-050.

1 system as soon as such system has been placed in operation.⁴

2 IV

3 It is probable that condition number 1 of the Shorelines
4 Substantial Development, Variance and Conditional Use Permit, which
5 requires appellants to comply with all applicable laws and
6 regulations, could be utilized to enforce public health laws and
7 regulations and be a roundabout means of accomplishing the results
8 sought to be obtained in Conclusion of Law II above. Enforcement in
9 this case would be left solely in the hands of the Department of
10 Social and Health Services and the local health authorities. By
11 specifically conditioning the permit as set forth in Section II, it is
12 clear that the Department of Ecology and the Attorney General will be
13 able to maintain an enforcement role under the provision of Chapter
14 90.58 RCW as well as under Chapter 90.48 RCW.⁵

15 V

16 The provisions of the Tacoma Zoning Ordinance (Chapter 13.06) are
17 not a part of the TSMP, therefore, a variance from the 7 1/2 foot
18 side-yard setback provision contained therein is not required in
19 connection with the issuance of a Shoreline Substantial Development
20

21 4. If the city code allows, the city might require the property
22 owner(s) to agree to participate in an LID as a condition of the
issuance of any building or shoreline permit.

23 5. RCW 90.48.080 makes it unlawful for any person to drain or
24 discharge any organic or inorganic matter that would cause or tend to
25 cause pollution of state waters. The Department of Ecology enforces
this and other provisions of ch. 90.48 RCW and may do so independently
of ch. 90.58 RCW.

1 Permit by the City of Tacoma to the appellants. In any event, the
2 side-yard setback provisions of Chapter 13.06 do not relate to the
3 proposed development of the appellants since no legal boundary line
4 has ever been established for appellant's building site which is
5 located within a large unplatted tract owned in fee by Salmon Beach
6 Improvement Club, Inc.

7 VI

8 The Conditional Use Permit granted by the City is consistent with
9 the conditional use requirements of the TSMP and WAC
10 173-14-140(1)(a)(b)(c)(d)(e) and WAC 173-14-140(3) provided that
11 conditions are added to the permit consistent with Conclusion of Law
12 II, and III above.

13 VII

14 The appellants, without utilizing the terminology of estoppel, in
15 effect argue that the long period of failure by the City of Tacoma to
16 strictly enforce building and health regulations should somehow
17 prevent the Department of Ecology from taking steps to enforce the
18 Shoreline Management Act. We hold that any such failure does not
19 estop the Department of Ecology or the City of Tacoma from taking
20 steps authorized by law to insure compliance with the Shoreline
21 Management Act and the Tacoma Shoreline Master Program.

VIII

The Board has examined the other contentions raised by the parties and has concluded that they are without merit.

IX

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Board enters the following

ORDER


The permit is remanded to the City of Tacoma to add conditions to the permit consistent with Conclusions of Law II and III of this decision.

DATED this 29th day of December, 1980.

SHORELINES HEARINGS BOARD


NAT W. WASHINGTON, Chairman


ROBERT S. DERRICK, Member


JAMES S. WILLIAMS, Member


DAVID AKANA, Member